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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/811,752

03/29/2004

Gerald H. Negley

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SUMMA, ALLAN & ADDITON, P.A.

11610 NORTH COMMUNITY HOUSE ROAD

SUITE 200

CHARLOTTE, NC 28277

EXAMINER

LANDAU, MATTHEW C

ART UNIT

PAPER NUMBER

2815

MAIL DATE

DELIVERY MODE

02/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/811,752		Applicant(s) NEGLEY, GERALD H.	
Examiner Matthew Landau		Art Unit 2815	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 22 January 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: 12.
 Claim(s) rejected: 1-5, 7-11 and 13-18.
 Claim(s) withdrawn from consideration: 6 and 19-44.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Matthew C. [Signature]

Continuation of 3. NOTE: The proposed amendment to claim 12 does not include all limitations of the base claim and any intervening claim, therefore the amendment is not entered. Specifically, the word "layer" has been omitted when referring to the source composition. This omission amounts to a change in scope that would require further consideration and/or search. Note that newly submitted Figure 7 does not overcome the previous drawing objection since it still does not show "a plurality of silicon dioxide portions on said p-type Group III nitride layer (claim 11). The drawing shows a plurality of silicon dioxide portions on a plurality of p-type layers, not a single p-type layer.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the devices of Touchy and Ogihara differ from one another such that they cannot be combined, and that the references teach away from one another since Ogihara specifically teaches creating a diffusion window to expose a surface of the substrate. Applicant further argues "the law is clear that an Examiner must be able to point to something in the prior art that suggests in some way a combination of a particular reference with another to arrive at the claimed invention". As stated in the final rejection, Touchy was modified by using an additional silicon oxide layer on the diffusion source layer. This feature was specifically taught by Ogihara. Ogihara even went as far as to explicitly teach a motivation for having this additional silicon oxide cap layer. This portion of Ogihara was cited in the Final rejection when provided the motivational statement. Clearly, the Examiner has pointed to something in the prior art that suggest the combination of a particular reference with another to arrive at the invention. Further, the references do not teach away from the combination since the rejection did not suggest Ogihara should be modified to include a silicon oxide layer between the substrate and the diffusion source layer. A 103 rejection necessarily involves taking elements from one reference and combining them with another. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). As stated in the Final Rejection, the teachings relied upon to make the combination (including the motivational statement) came specifically from the references themselves and not applicant's specification. Therefore, the examiner did not use improper hindsight reasoning. Regarding the rejection of Omi, Touchy and Ogihara, Applicant again argues that there is no motivation for the proposed combination. However, as stated in the Final Rejection, the rejection in question does provide a motivation. This argument has been fully addressed in the Final rejection.